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**WISHA ADMINISTRATIVE RULES**

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## Definitions

**WAC 296-350-010 Definitions.** The following definitions apply to terms used in chapter 296-350 WAC.

**Abatement date** means the date on the citation when you must comply with specific safety and health standards listed on the citation and notice of assessment or the corrective notice of redetermination.

**Board** means the board of industrial insurance appeals.

**Citation and notice** refers to the citation issued to an employer under RCW 49.140.120 for any violations of WISHA safety and health rules, also known as a citation and notice of assessment.

**Corrective notice** refers to a corrective notice of redetermination issued after we have reassumed jurisdiction over a citation and notice.

**Interim order** is an order we grant allowing you to vary from WISHA requirements until we have determined whether to grant either a permanent or temporary variance.

**Our** refers to the department of labor and industries.

**Permanent variance** is an order we grant allowing you to vary from WISHA requirements when you use an alternate means that provides equal worker protection. It is in effect until we modify or revoke it.

**Temporary variance** is an order we grant allowing you to vary from WISHA requirements under certain circumstances (see WAC 296-350-70020).

**Us** refers to the department of labor and industries.

**Variance** refers to any order granted by us allowing you to vary from WISHA safety and health rules, including a permanent variance, temporary variance, or interim order.

**We** means the WISHA services division of the department of labor and industries and any other divisions charged with enforcing chapter 49.17 RCW, Washington Industrial Safety and Health Act.

**Working days** mean weekdays that do not fall on state holidays (see RCW 1.16.050 for a complete description of state holidays). State holidays include:

- January 1-New Year's Day;
- Martin Luther King, Jr. Day;
- Presidents' Day;
- Memorial Day;
- July 4-Independence Day;
- Labor Day;
- November 11-Veterans' Day;
- Thanksgiving Day;
- The day after Thanksgiving Day; and
- December 25-Christmas Day.

**You** means the employer as defined in RCW 49.17.020.

**Your** refers to the employer as defined in RCW 49.17.020.

## Variance From WISHA Rules

**WAC 296-350-700 Variance from WISHA rules.** Rules covering variances are found in WAC 296-350-70010 through 296-350-70070. These rules interpret RCW 49.17.080 and 49.17.090.

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**WAC 296-350-70010 Purpose of variances.** In certain circumstances, we allow you to deviate from a specific WISHA safety and health standard when you use agency-approved substitute measures to protect workers.

You may request the following as described in WAC 296-350-70015 through 296-350-70025:

- Permanent variances.
- Temporary variances.
- Interim orders.

**WAC 296-350-70015 Permanent variances--Description .**

- (1) You may request a permanent variance if you can show that you are providing an alternate means of protecting your employees from hazards. These alternative means must be as effective as the methods required by the standard.
- (2) We review permanent variances periodically to decide whether they are still needed or need to be changed (see WAC 296-350-70065(1)).
- (3) A permanent variance remains in effect unless we modify or revoke it.

**WAC 296-350-70020 Temporary variances--Description.**

- (1) You may request a temporary variance if you cannot meet one or more new WISHA requirements because:
  - Professional or technical people are not available;
  - Materials or equipment are not available; or
  - You cannot complete construction or alteration of facilities by the effective date of a standard.

If you request a temporary variance, you must have an effective plan for coming into compliance with the applicable safety and health standards as quickly as possible.

- (2) You must show that you are taking all available steps to safeguard your employees against hazards covered by the standard.
- (3) Temporary variances remain in effect until you comply with the requirements of current WISHA rules or no longer than one year, whichever is shorter.
- (4) You may renew a temporary variance twice for no more than one hundred eighty days each time it is renewed (see WAC 296-350-70040).

**WAC 296-350-70025 Interim orders--Description and requesting.**

- (1) You may request an interim order when requesting a permanent or temporary variance, or anytime after. Interim orders allow you to vary from existing WISHA requirements until we make a final decision on your variance request.
- (2) We may choose to issue an interim order in response to a variance request, even when the interim order was not specifically requested.
- (3) Our decision to grant or deny an interim order will not restrict our decision on a permanent or temporary variance request.
- (4) Interim orders will be effective until revoked or until we approve or deny your variance request.

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**WAC 296-350-70030 Requesting a permanent variance.**

- (1) Request for a permanent variance must be in writing and signed by you or your representative. You must include the following items in your variance request:

- Employer name and address;
- What work locations and situations that you want the variance to apply to;
- The requirements from which you want the variance (be specific and include WAC numbers);
- A specific description of your proposed alternate means of protecting employees from hazards;
- How the proposed alternative means will protect employees;
- How you have notified your employees you are applying for a variance as required in WAC 296-350-70050; and
- How you have notified your employees that they may request a hearing. All applications for variances must contain the following notice on the first page, written large enough and clearly enough to be read easily:

“Attention Employees: Your employer is applying to the Department of Labor and Industries for a variance from safety and health standards. You have a right to ask the Department to have a hearing on this application, but you must ask for the hearing in writing by (date.\*.\*), or the Department may act on this application without a hearing.”

.\*. \* This date must be at least twenty-one calendar days but not more than one month after submitting your variance request.

- (2) Department forms for requesting variances are available from any labor and industries office in the state.

**WAC 296-350-70035 Requesting a temporary variance.** Requests for a temporary variance must be in writing and signed by you or your representative. You must include:

- All items listed in WAC 296-350-70030, Requesting a permanent variance.
- A specific explanation of why you cannot comply with the requirements, including documentation that supports your belief.
- What steps you will take to protect your employees until you can comply:
- What you are doing to come into compliance.
- When you will be able to come into compliance.
- A statement that this request is from a qualified person having first hand knowledge of the facts represented.

**WAC 296-350-70040 Renewing temporary variances .** You must apply for a renewal at least ninety days before the expiration date of the order. To apply for renewal, write to us, explaining why you need more time to come into compliance.

**WAC 296-350-70045 Submitting variance requests.** Submit permanent variance, temporary variance, or interim order requests using one of the following:

- Mail to:  
Assistant Director, WISHA Services Division  
PO Box 44625  
Olympia, WA 98504-4625
- Fax to: (360) 902-5459.
- Bring to any department of labor and industries office.

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**WAC 296-350-70050 Notifying employees about variance requests.** You must notify your employees before requesting a permanent variance, temporary variance, or interim order by:

- Posting a copy of the application on your safety bulletin board; and
- Using other appropriate means for employees who cannot be expected to receive notices posted on the safety bulletin board (such as, providing a copy to an authorized representative or the safety committee).

**WAC 296-350-70055 Department review and decision.**

- (1) Review. We will review your request to determine whether to grant a variance to WISHA safety and health rules.
  - If we need more information, we may contact you or others who may have relevant information.
  - If we need to visit your workplace, we will contact you to make arrangements.
  - If you do not provide us with the information we need or do not let us visit your workplace, we will deny your request.
- (2) Decision. After reviewing your request, we will issue a written order either granting or denying it.
  - We will not make a decision before the date for requesting a hearing that is listed on the variance request.
  - If you have appealed a citation and notice that relates to the subject of the variance request, we may choose not to make a decision until after your appeal is resolved.
  - If granted, the order will include where it applies, what rules it covers, what you must do instead of following the existing rules, an effective date, and any expiration dates, if applicable. Variances will not be retroactive. The effective date will be on or after the day we issue the order granting the variance.
  - If denied, the order will include a brief statement with reason(s) supporting our decision.

**WAC 296-350-70060 Your responsibilities once we make a decision.** When you receive a written decision regarding a variance request or interim order, you must:

- Immediately notify affected employees using the same means used for the variance application (see WAC 296-350-70050); and
- Abide by the requirements specified in any variance. We can issue citations for violations of any variance.

**WAC 296-350-70065 Changing a variance.**

- (1) Permanent variances. We cannot change the terms of a permanent variance for the first six months it is in effect. Any time after six months, we will consider changing the terms of a variance when:
  - You or your employees request changes; or
  - We decide that changes may be warranted.
- (2) Temporary variances. We will only consider changing a temporary variance as part of the renewal process.
- (3) Interim orders. We will not change an interim order.
- (4) Hearings. You, your employees, or employee representatives may request a hearing on variance changes as with variance applications (see WAC 296-350-70070).

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**WAC 296-350-70070 Variance hearings.**

- (1) Requesting a hearing. You, any affected employee, or an employee representative may request a hearing on a variance request, temporary variance request, or changes to existing variances. All requests must be received in writing, signed by the applicant(s), and must be received by the assistant director within twenty-one calendar days of the date of the application for the variance.
- (2) Department notice. We will issue a notice of the hearing ten days after receiving your request advising all interested parties that they will have the opportunity to participate. We will schedule the hearing so that you will receive notice at least twenty calendar days in advance of the hearing date.
- (3) Notifying employees. Upon receiving notice of the hearing, you must immediately post copies of the notice, give copies to affected employees and employee representatives, and use any other appropriate means (see WAC 296-350-70050).
- (4) Description of hearing. At the hearing, our representative will explain our view of your request for a variance or any proposed change to a variance. You, your employees, or employee representatives will then have an opportunity to explain your views and provide any relevant documents or information. Information gathered at the hearing will be used in making a decision about whether to grant or deny the request.
- (5) We may tape or record a variance hearing. You, your employees, or employee representatives may request copies at cost.

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**WAC 296-350-990 Appendix A-Form F418-023-000-Application for copies of citations and notices.**

**APPENDIX A**

DEPT. OF LABOR & INDUSTRIES  
Div. of Industrial Safety & Health  
ATTN: Records  
P.O. Box 44632  
Olympia, Washington 98504-4632

APPLICATION FOR COPIES OF CITATION AND NOTICE  
ISSUED PURSUANT TO THE WASHINGTON INDUSTRIAL SAFETY  
AND HEALTH ACT

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Any employee of an employer who has been selected by the employees of that employer to act as their representative as defined in WAC 296-350-500 may apply for copies of CITATION AND NOTICES issued to said employer.

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**DEFINITION:**

WAC 296-350-500(2) - "Employee representative" means:

- (a) Any officer of the recognized bargaining unit of employees, acting on behalf of the employees of the employer.
- (b) Any employee representative of an employer-employee safety committee within an establishment of the firm of the employer.
- (c) Any employee of an employer who has been selected by the employees of that employer to act as their representative for the purposes indicated in subsection (1) of this section. Such selection shall be evidence of a letter or other written communication to the Division of Industrial Safety and Health stating the name of the employee so selected and signed by not less than one-half of the employees of the employer.

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Applicant certifies he/she is an employee representative by virtue of WAC 296-350-500(2)

CERTIFICATION: I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signature	Position	Date

Name and address of applicant to which copies of CITATION AND NOTICES should be sent.

Name, address and Labor & Industries account I.D. and/or Unified Business Identifier of EMPLOYER HAVING EMPLOYEES WHO ARE REPRESENTED by the applicant (please give full information for each employer you represent-use extra paper if required):

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The director or his/her authorized representative may deny this application if more than one employee representative has applied or if the applicant does not qualify as an employee representative.

For Department Use Only		
Application Revd. _____	Application Granted by _____	Date Application Granted _____
Applicant Notified _____	Expiration Date _____	
Comments:   		